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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/410,484	09/30/1999	JAN WADSTEIN	NATNUT-03972	6938

7590

12/16/2005

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EXAMINER
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ARNOLD, ERNST V

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 12/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/410,484		WADSTEIN ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Ernst V. Arnold		1616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 7 and 9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

### **DETAILED ACTION**

The new Examiner of record acknowledges receipt of Remarks filed on 11/12/2004. Please direct future inquiries to the current Examiner. The Examiner notes the amendments in the claims to overcome the 35 U.S.C. 112 second paragraph rejection of the Office Action filed on 06/10/2004. Those rejections are withdrawn. However, the Examiner has reviewed the long prosecution history and, after careful consideration, has found art that reads upon the claimed subject matter. This action is non-final.

### ***Status of the Claims***

Claims 1-3, 7 and 9 are pending and are presented for examination on the merits. Claims 4-6 have been canceled. Claims 8 and 10-18 have been withdrawn from consideration.

The Examiner notes that instant claim 1 recites the limitation "said subjects" in step b). A single subject is recited in step a). The Examiner suggests that "a subject" be changed to ---a hypertensive human patient in need of hypertension treatment---.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1616

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Cook et al. (US 5,554,646).

Instant claim 1 is drawn to a method of treating hypertension in humans comprising the steps of providing a subject and a composition comprising a safe and effective amount of conjugated linoleic acid for treating hypertension; and administering said conjugated linoleic acid composition to said subject so that blood pressure of said subjects is reduced.

Cook et al. disclose a method of reducing body fat comprising the administration of a safe and effective amount of conjugated linoleic acid (Abstract and claims 1-9). Cook et al. define conjugated linoleic acid as including mixtures and salts thereof (Column 4, lines 21-26). Cook et al. disclose 9,11-octadecadienoic acid and 10,12-octadecadienoic acid as conjugated linoleic acids obtained by their methods and therefore reading on instant claim 3 (Column 4, lines 37-41 and 60-67). Other geometric isomers, including cis-9, cis-11, can be obtained consequently reading on instant claim 2 (Column 4, lines 48-59 and column 5, lines 3-8)). Cook et al. disclose the addition of 0.1 to 10 grams of conjugated linoleic acid to the diet of humans as a food supplement thus reading on instant claim 9 (Column 2, example 3). Since the material was ingested, then the conjugated linoleic acid was administered orally and therefore reads on instant claim 7.

Since the composition in the method of Cook et al. is exactly the same as the instant invention and used in the same proportions as the instant invention, the subjects

Art Unit: 1616

receiving the composition of Cook et al. would have inherently had the benefit of hypertension treatment and lowering of blood pressure. It is the Examiner's position that the "use" of linoleic acid to treat hypertension is directed to a property of linoleic acid and therefore the claims are anticipated. See: In re May, 574 F.2d 1082, 1090, 197 USPQ 601, 607 (CCPA 1978). Ex parte Novitski, 26 USPQ2d 1389 (Bd. Pat.App. & Inter. 1993).


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernst V. Arnold whose telephone number is 571-272-8509. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EVA



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